

ZONING BOARD OF APPEALS
MEETING MINUTES
November 10, 2009
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Deland Davis, Mike Fatt, James Moreno, Carlyle Sims, Becky Squires and John Stetler

Members Excused: Greg Dunn

Staff Present: Jill Steele, Asst. City Attorney; Christine Hilton, Planning Supervisor; and Leona Parrish, Planning Admin. Assistant.

ADDITIONS OR DELETIONS TO THE AGENDA: None

OLD BUSINESS: None

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

NEW BUSINESS:

Appeal #Z-13-09: (120 Main Street)

Mr. John Stetler stated for the record this was an appeal from Mr. Jerry Stay, 7041 D Drive North, Battle Creek, MI 49014, requesting a variance to allow continuation of a Legal Non-Conforming Use for a Restaurant/Bar in an "O-1 Office Business District" for property located at 120 Main Street, Parcel # 8040-00-107-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1258.04.

Ms. Angela Moore, 20673 Capital Avenue, N.E., Battle Creek, MI 49017, was present to speak on behalf of property owner Mr. Jerry Stay. Ms. Moore stated they have a prospective buyer and want to use the property for a restaurant/bar and possible reception hall; said they have some requests such as Post Cereal wanting to hold Christmas Dinner at this location. Stated they have had a hard time finding a buyer for office use. Said their liquor license had been lost and does not have one at this time.

Mr. Carlyle Sims asked if Ms. Moore had written authority to speak for Mr. Stay. Ms. Moore asked if she should sit and listen to what the board decides.

Mr. John Stetler asked for the staff report to be read at this time before addressing Mr. Sims question.

Ms. Christine Hilton, Planning Supervisor stated this was an appeal from Mr. Jerry Stay (property owner), 7041 D Drive North, Battle Creek, MI 49014 requesting to allow continuation of an Legal Non-

Conforming Use for a Restaurant/Bar for property located at 120 Main Street and is located in a "O-1 Office District", which the requested use is not allowed. Ms. Hilton stated city records indicate that a home occupied the lot from approximately 1900-1983 and in 1983 the home was demolished. Between 1983 and 1997 a machine shop operated at 120 Main Street and in 1997 the machine shop was remodeled for a restaurant/bar use. Stated the restaurant/bar use has lost its nonconforming status to operate in the "O-1" district because they have not been in operation for a period of greater than one year. As stated in the staff report the criteria set forth by statute in order to review a use variance request, essentially it has to meet the unnecessary hardship criteria that is set forth in the statute. Staff did not feel it meets the criteria and recommend denial of this request.

Mr. Stetler asked Ms. Moore if she had any written authorization from property owner or if she was an attorney. Ms. Moore said she does not.

Ms. Parrish, Admin. Assist., Planning Dept., noted the property owner had signed and submitted the application regarding this variance request and that in the letter sent to him notifying him to attend today's meeting, it stated he or a representative would need to attend to speak to the board.

Ms. Jill Steele, City Attorney's Ofc., stated MCL.125.36(04) of the Zoning Enabling Act states "at a hearing under this section a party may appear personally or by an agent, or attorney". The question is; is this a person he designated as his agent and does it require a power of attorney, since it has been noticed for today and she is representing and here today as his agent the board may as well go forward.

Mr. Carlyle Sims asked how long the property had been vacant. Ms. Moore stated approximately two (2) years and that the previous land-contract owners had lost their liquor license and unable to be used. Said it is now being sold without a liquor license.

Mr. John Stetler asked when the property was changed to a Bar in 1997 from an industrial use was it then zoned "O1" and the city took no action against the owner to prevent the bar/restaurant, is that true. Ms. Christine Hilton stated, yes.

Mr. Carlyle Sims stated he thinks he remembers this property coming before Planning & Zoning in the past and that the persons that made the change had moved the license from a different location nearby.

Mr. James Moreno said Mr. Sims was speaking of the Lighthouse. Mr. Carlyle Sims said yes, that was the license they used. Mr. Moreno said that it had not come to the Zoning Board that it went before Planning Commission.

Mr. Stetler stated there was no record found from city staff regarding the approval from a board or commission.

Ms. Moore stated that Mr. Jerry Stay was now present at this meeting.

Ms. Becky Squires asked Mr. Stay if there is someone that wishes to buy it at this time.

Mr. Jerry Stay came forward and answered yes to Ms. Squires question. He stated he did not understand how a property could be rezoned that is a bar in the first place. Said it was Snickkers when owned by the Alday's which came from the Lighthouse, which he was a partner; they went bankrupt on him and

he became a partner with Mr. Thomas Brown and had gotten another liquor license which was then lost. Said it was then closed down for a period of two-years. Asked how it can be rezoned from a bar to office space.

Ms. Linda Alday, 132 Main Street, Battle Creek, MI came forward to speak. Stated she was previously Mr. Stay's partner in the past business for five-years and that she could clear-up the zoning problem. Said they had met with the Zoning Board before they opened the restaurant and because the machine shop was zoned office, they were given a grandfathering because what they were putting in there was less harmful to the environment than what was there before. Noted the Zoning Board had approved and the zoning was never changed, they operated the restaurant under an "Office zoning". Said she was here today only because she had owned the Lighthouse for twelve-years and Mr. Stay, her husband and herself were the owners of Snickers for five-years. Said she currently owns property across the street at 132 Main St., and have three other renters who rent rooms from her upstairs and also own the property at 10 Bartlett Street and have two renters there. Stated they tried everything to keep it a good place and keep the drugs out of the business and had called the police several times to stop the crime. Noted after a new bar owner purchased the property it became a nightmare and people stayed after the business closed and she watched drugs being exchanged. Stated guns were shot towards her residential property and had found bullets outside her window and that it was hard to keep the bad elements out of this area.

Ms. Angela Moore stated she also wants to create a safe and good environment and had been there when it was Snickers when it was good and bad. Noted the new owner wants to add additional parking with a fenced area and install cameras for better security and liability purposes. Stated he has experience in the past with having this type of businesses in West Virginia.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE # Z-13-09 TO ALLOW A RESTRAUANT/BAR IN AN "O-1 OFFICE DISTRICT" AS SUBMITTED FOR PROPERTY LOCATED AT 120 MAIN STREET, SUPPORTED BY MR. JIM MORENO.

Discussion:

Mr. Deland Davis stated it seemed cut and dry in reading the report being a legal non-conforming property and being vacant for more than one-year and appears that it needs to go back to an "O-1" use. Now he feels after the discussion it might be different and that the Zoning Board of Appeals had approved this use in the past. He is struggling with how it all fits.

Mr. John Stetler said it is a unique situation, by the city's inaction or whatever action was taken in that the city allowed it to be used as a bar/restaurant while it was an "O-1" zone and feels it is a hardship to the owner to change from a restaurant to office usage at the wishes of the city's whim, because the city had not enforced in the past and their inaction is an action. Said he would be voting in favor.

Ms. Becky Squires stated she agrees and remembers when it was a restaurant/bar and obviously the rules were broken at one point, once it has been converted; not sure how it can be converted back to that status. She is concerned about the neighborhood and remembers issues with the police at that location several times, but is the same at any nightclubs in town from time-to-time. Stated she is in favor.

Mr. Carlyle Sims does not understand how it became an "O-1 Office District". Said he was not sure where it came from as he felt it had been retail for years and in the 1940's there was a Dentist Office there. He does not see anyone wanting to put offices in that location unless that whole area makes one big change. Mr. Sims stated in the past they had security in the parking lot to keep the patrons safe. Noted there are other buildings in the area that are currently empty and deteriorating and if there is someone wanting to use and pay taxes he would be voting in favor to allow.

Mr. Mike Fatt stated the board should not make decision based on economics which is not supposed to be grounds for a justification. He said he empathizes with the fact it has gone back and forth, but even if they accept the idea the city's inaction constitutes a form of approval; the subject is now open for discussion again as it has been vacant for two-years. He feels that not having a bar at this location is a distinct improvement to the city. Said he has seen far too many incidences in the city where there are bars being adjacent to residential areas and creating problems for the neighbors; he empathizes with the neighbors. Said he does not see the justification here other than financial.

Mr. James Moreno said when it was Snickers it could not be controlled then by the property owners; that by putting it back into a bar it would recreate only with a new owner. Noted this area has always been plagued by problems because of the density of not only the population that traverses through it, and the fact there are so many bars, etc. there for persons to get into trouble. As a person who lives in the neighborhood (indirectly) they hear and see those problems and it becomes a financial situation and is sorry it is there, but is not empowered to change and issue what is based on finance. He feels they need less bars in that neighborhood as they are saturated enough and he could not be in support.

Mr. Deland Davis stated he has an opposite take; he drove there and noted a small road to the right-hand side and was surprised at the number of homes in the area with Franklin Metal & Iron to the west and had not realized they were there before. Said years ago he and his wife had eaten there and thought it was a good place to eat in the past, but had only been in the front parking lot.

Mr. John Stetler said he was not looking at it in a financial aspect, as much as he was the hardship being put upon the property owner by the cities actions or inaction.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; THREE IN FAVOR: SIMS, SQUIRES, AND STETLER; THREE OPPOSED: DAVIS, FATT, AND MORENO: MOTION FAILED.

Vote No Findings \ Comments:

Mr. Davis stated he voted no because of unnecessary hardship issue #1 as he sees a hardship; but not an unnecessary hardship.

Mr. Mike Fatt stated he voted no because of the same reason as Mr. Davis (noted above).

Mr. James Moreno votes no because of the same reason as Mr. Davis and Mr. Fatt (noted above) and also in support of information the staff provided.

Ms. Jill Steele stated under the Zoning Enabling Act it is required to have five members vote in favor for the variance to be granted.

The board also asked it be noted for the record that their vote is based on agreement with the findings in the staff report for the denial of the variance.

Mr. John Stetler, Chairperson, stated the petitioner has the option to appeal the decision of the Zoning Board to the Circuit Court.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE AUGUST 11, 2009 ZONING BOARD OF APPEALS MINUTES; SUPPORTED BY MR. JAMES MORENO. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. John Stetler asked how many alternates does the Zoning Board currently have. It was stated there is one alternate Mr. Rick Barnes and in the past we had two. Mr. Deland Davis was an alternate and when a seat was available he became a member which then left only one alternate.

Mr. John Stetler suggested that we ask the Mayor to appoint a second alternate to the Zoning Board of Appeals.

ADJOURNMENT: Mr. John Stetler moved for the meeting to be adjourned; meeting was adjourned at 4:45 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department